

STATE OF VERMONT
HUMAN SERVICES BOARD

In re) Fair Hearing No. 9329
)
Appeal of)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

FINDINGS OF FACT

1. The petitioner is a 56-year-old woman with a high school diploma. She has a fourteen-year history as a general factory worker. In her job she stood on her feet 8 hours per day with occasional sitting breaks and was required to lift materials weighing from 25 - 30 pounds from a cart and feed them into a rolling and cutting machine.

2. The petitioner quit her job in 1979 after she suffered a heart attack. She has not worked since that time due to a series of illnesses and operations. In 1980 she was operated on for a hiatal hernia. In 1982 she had a thoracotomy for an esophagal hernia. In April of 1989 she had a bunionectomy. The petitioner was apparently receiving Medicaid (and Social Security) for some time based on these problems but was terminated based on a finding that she could return to her job.

3. The medical evidence shows that the petitioner's heart function has been essentially normal since her recovery from heart surgery though an "intraventricular conduction defect" was noted by X-ray in 1985. She suffers from occasional shortness of breath and continues to take Nitroglycerine.

4. The evidence shows with regard to the petitioner's bunionectomy that her surgery went well and her healing was good. Although it was expected that she would be able to stand for a full day by mid-July, the petitioner has continued to experience swelling in her feet and still wears special shoes as of November 1989. She is, however, able to walk up to a mile per day which she does for her heart condition as her doctor has directed. The petitioner has not had the funds to pay for further visits and evaluations by the physician following this problem since June of this year.

5. The evidence shows that the petitioner has suffered left side pain from her shoulder to her groin area since 1982 for which no etiology has been pinpointed but which is probably the residual of her 1982 thoracotomy and which may be the result of a pinched nerve. The petitioner has undergone various treatments for her pain since 1982 including serial nerve blocks, TENS units, several prescription pain killers and a thoracic binder. However, she continues to experience chronic pain in her left chest and side which a neurologist who has evaluated her termed

"essentially incapacitating". She currently takes Desyrel on a daily basis for pain which is paid for through the General Assistance program.

6. As a result of the pain, the petitioner cannot lift her arms over her head or reach out. She cannot lift even her twelve-pound dog without pain and is totally unable to lift her 24-pound grandchild. Even when she is not moving, she has spontaneous pain attacks and sitting for prolonged periods bring on attacks as well.

7. The petitioner until recently lived in a mobile home where she prepared her meals and did some light housework. The grocery shopping was done by her daughter as she could not lift the bags. Since then she has lost her home and is living with one of her grown children who will not allow her to attempt housework. She does not drive any more except when essential because it hurts her side and back. She spends her days listening to music or watching TV. She presented at her hearing as a very nervous and tearful person.

ORDER

The department's decision is reversed.

REASONS

Medicaid Manual Section M211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve

(12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

DDS has found that the petitioner can return to her former job as a factory worker. However, the credible evidence shows that the petitioner no longer has the ability to lift the weight or to reach to feed the machine that she had before her 1982 operation. It must be concluded, therefore, that the petitioner cannot return to her former job or do any job that might be described as "medium work."¹

The petitioner's work abilities, at best², meet the definition of "light work":

Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

20 C.F.R. § 404.1567(b).

When an applicant is restricted to light work, is of "advanced age" (55 and over), and is a high school graduate with an unskilled³ work history, the Social Security regulations direct that the applicant be found "disabled".

Rule 202.04, 20 C.F.R. § 404, Subpart P, Appendix II.

Therefore, it must be concluded that the petitioner meets the eligibility requirements for Medicaid disability.

FOOTNOTES

¹"Medium work" involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work, we determine that he or she can also do sedentary and light work. 20 C.F.R. § 404.1567(c).

²Her restrictions with regard to sitting and reaching for controls make it doubtful that she can even do this work.

³"Unskilled work" is work which needs little or no judgement to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength. For example, we consider jobs unskilled if the primary work duties are handling, feeding and offbearing (that is, placing or removing materials from machines which are automatic or operated by others), or machine tending, and a person can usually learn to do the job in 30 days, and little specific vocational preparation and judgement are needed. A person does not gain work skills by doing unskilled jobs. 20 C.F.R. § 404.1568(a).

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